

1 Sean P. Flynn, Esq. (SBN 220184)
2 sflynn@foleymansfield.com
3 M. Amadea Groseclose, Esq. (SBN 267091)
4 mgroseclose@foleymansfield.com
5 **FOLEY & MANSFIELD, PLLP**
300 South Grand Avenue, Suite 2800
Los Angeles, CA 90071
Telephone: (213) 283-2100
Facsimile: (213) 283-2101

6 Attorneys for Defendant
7 **FMA ALLIANCE, LTD.**

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 DOUGLAS KRUSCHEN, an individual,
12 Plaintiff,
13 vs.
14 FMA ALLIANCE, LTD.,
15 Defendant.

Case No: CV13-7504

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT AND
DEMAND FOR JURY TRIAL**

Complaint Filed: October 9, 2013
Trial Date: TBD

17
18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Defendant, FMA ALLIANCE, LTD. (“Defendant”), hereby responds on behalf of
2 itself, and no other, to the Complaint of Plaintiff, DOUGLAS KRUSCHEN (“Plaintiff”),
3 as follows:

4 1. Pursuant to Rule 8(b)(3) of the Federal Rules of Civil Procedure, Defendant
5 generally denies each and every allegation contained in the complaint except those
6 expressly admitted below.

7 2. Defendant admits the allegations of paragraphs 8-11; and 22, relative to
8 Defendant’s principal place of business.

9 **PRAYER FOR RELIEF**

10 Defendant denies that Plaintiff is entitled to any of the items set forth in the prayer
11 for relief.

12 **AFFIRMATIVE DEFENSES**

13 **First Affirmative Defense**

14 (Statute of Limitations)

15 Defendant is informed and believes and thereon alleged that the applicable statutes
16 of limitation bar all claims for relief in the Complaint.

17 **Second Affirmative Defense**

18 (Contributory/Comparative Fault)

19 Defendant is informed and believes and thereon alleges that any alleged damages
20 sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff and resulted
21 from Plaintiff’s own negligence, which equaled or exceeded any alleged negligence or
22 wrongdoing by Defendant.

23 **Third Affirmative Defense**

24 (Failure to Mitigate)

25 The damages claimed by Plaintiff could have been mitigated with due diligence or
26 by one acting under similar circumstances. Plaintiff’s failure to mitigate is a bar to
27 recovery under the Complaint.
28

1 **Fourth Affirmative Defense**

2 (Estoppel)

3 The Complaint and each of its purported claims for relief are barred by the doctrine
4 of estoppel.

5 **Fifth Affirmative Defense**

6 (Laches)

7 The Complaint and each of its purported claims for relief are barred by the doctrine
8 of laches.

9 **Sixth Affirmative Defense**

10 (Unclean Hands)

11 The Complaint and each of its purported claims for relief are barred by the doctrine
12 of unclean hands. Plaintiff's Complaint does not contend that the subject debt is not
13 owed, nor that the subject debt has been satisfied. As such, Plaintiff is in breach of the
14 agreement with the credit originator, and but for the breach of that agreement Defendant
15 would not have communicated with Plaintiff.

16 **Seventh Affirmative Defense**

17 (Waiver)

18 The Complaint and each of its purported claims for relief are barred by the doctrine
19 of waiver.

20 **Eighth Affirmative Defense**

21 (Good Faith)

22 Defendant alleges that at all times it acted in good faith and with good cause. The
23 conduct of Defendant was within the reasonable expectations of the parties and was
24 reasonably related to Defendant's legitimate business interests upon the basis of
25 reasonable factors.

26 **Ninth Affirmative Defense**

27 (Failure to State a Claim)

28 The Complaint, fails to state facts sufficient to constitute a cause of action against

1 Defendant relative to the content of the alleged communications and further fails to state
2 facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever,
3 from Defendant.

4 **Tenth Affirmative Defense**

5 **(Joinder)**

6 Defendant is informed and believes and thereon alleges that any purported
7 damages allegedly suffered by Plaintiffs are the result of the acts or omissions of third
8 persons over whom Defendant had neither control nor responsibility, and whom Plaintiff
9 has failed to name in this action.

10 **Eleventh Affirmative Defense**

11 **(Express Consent)**

12 Defendant had prior express written consent of Plaintiff to place the subject calls.

13 **Eleventh Affirmative Defense**

14 **(Reserved Affirmative Defenses)**

15 Defendant alleges that the Complaint does not describe the alleged actions with
16 sufficient particularity to permit it to ascertain what other defenses may exist at this time.
17 Defendant therefore reserves the right to assert all defenses that may pertain to the
18 Complaint as the facts of the case are discovered.

19 **WHEREFORE**, Defendant prays as follows:

- 20 1. Plaintiff takes nothing by way of his Complaint herein and that this action is
21 dismissed in its entirety;
- 22 2. For Defendant's attorney's fees and costs incurred herein;
- 23 3. For such other relief as the Court may deem just and proper.
- 24

25 DATED: November 14, 2013

FOLEY & MANSFIELD, PLLP

26 By: /s/ Sean P. Flynn

27 Sean P. Flynn

Attorneys for Defendant

28 **FMA ALLIANCE, LTD.**

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that defendant FMA ALLIANCE, LTD. hereby
demands a trial by jury in this action.

DATED: November 14, 2013

FOLEY & MANSFIELD, PLLP

By: /s/ Sean P. Flynn

Sean P. Flynn
Attorneys for Defendant
FMA ALLIANCE, LTD.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 300 S. Grand Ave., Suite 2800, Los Angeles, CA 90071.

On **November 14, 2013**, I filed and served the foregoing document described as: DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL.

| | |
|---|--|
| Douglas Kruschen P.O. Box 465 Agoura Hills, CA 91376-0465 | |
|---|--|

| | |
|----------------------|--|
| Plaintiff in Pro Per | |
|----------------------|--|

☒ **(BY MAIL)** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses above and placed the envelope for collection and mailing, following our ordinary business practices. I am ready familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **(BY COURT'S CM/ECF SYSTEM)** Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF systems, to the parties and/or counsel who are registered CM/ECF Users set forth in the service list that is located on the PACER website.

Executed on **November 14, 2013**, Los Angeles, California.

☒ **[FEDERAL]** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

/s/ OLGA VALADEZ

Olga Valadez